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Paper No. 7

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**OFFICE OF PETITIONS**

Kent N Stone  
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Cleveland, OH 44135

In re Application of :  
Duffy et al. : DECISION DISMISSING  
Application No. 09/498,794 : PETITION  
Filed: February 1, 2000 :  
Attorney Docket Number: LEW16,833-1:

This is a decision on the Petition to Accept Missing Item in New Application under 37 CFR 1.182, which is being treated as a petition to accord a filing date February 1, 2000 to page 7 of the specification.

The petition is dismissed.

The application was filed on February 1, 2000. However, on April 4, 2000, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" (hereinafter "Notice"), indicating, that the application had been accorded a filing date of February 1, 2000, and advising applicant that page 7 of the specification appeared to have been omitted.

In response, Petitioner filed the instant petition wherein Petitioner avers that page 7 of the specification was filed with the application. This contention is supported by the Declaration Kent N. Stone, and a patent application mailing card which putatively indicate that 29 pages of specification were filed on February 1, 2000. However, the application file does not contain a copy of a date stamped filing receipt<sup>1</sup>.

Upon review of the record, 28 pages of specification (pages 1-6, 8-29), including claims and the abstract, are located among the application papers. However, page 7 of the specification has not been located in the Official file. The Patent and Trademark Office (Office) file is the official record of the papers filed in this application. A review of the official file reveals that no copy of a date stamped filing receipt indicating that 29 pages of specification, claims and abstract was filed.

The best evidence of what was filed on February 1, 2000, is applicant's postcard receipt. "If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the

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<sup>1</sup>Petitioner provides a copy of his patent application mailing card; however, the mailing card does not contain the USPTO date stamp indicating receipt herein.

items which are being filed serves as prima facie evidence of receipt in the USPTO of all items listed thereon on the date stamped thereon by the USPTO.." MPEP § 503.

It is noted that this petition is dismissed without prejudice. Petitioner should submit a copy of a return receipt postcard evincing receipt by the Office of page 7 of the specification.

Any request for reconsideration should be filed within **TWO MONTHS** of the date of this Decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

Further correspondence with respect to this matter should be addressed as follows:


By mail: Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

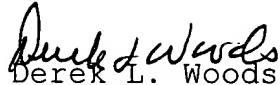
By facsimile: (703) 308-6916  
Attn: Office of Petitions

By hand: Office of Petitions  
2201 South Clark Place  
Crystal Plaza 4, Suite 3C23  
Arlington, VA 22202

This application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of February 1, 2000, using pages 1 - 6 and 8 - 29 of specification filed on that date.

Telephone inquiries concerning this decision should be directed to Petitions Attorney Derek L. Woods at (703) 305-0014.

  
Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions

  
Derek L. Woods  
Petitions Attorney  
Office of Petitions